

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2003-1045-PST-E TCEQ ID: RN100825090 CASE NO.: 9296
RESPONDENT NAME: FRIEND ENTERPRISES INC. DBA FRIENDLY MART

Page 1 of 3

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 7200 Manchaca, Austin, Travis County</p> <p>TYPE OF OPERATION: convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 21, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Robert Mosley, Litigation Division, MC 175, (512) 239-0627 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Air Enforcement Section, MC 169, (512) 239-4490</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2929</p> <p style="margin-left: 20px;">Respondent: Mr. Sultanali Momin, President, Friend Enterprises Inc., 7200 Manchaca Road, Austin, Texas 78745</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: September 11, 2003</p> <p>Date of NOEs Relating to this Case: October 19, 2003 and November 18, 2003</p> <p>Background Facts: An EDPRP was filed on June 17, 2002, January 18, 2006. An EDFARP was filed on October 11, 2006. An EDSARP was filed on January 19, 2007. The Respondent received notice of the EDSARP on January 20, 2007, as evidenced by the signature on the return receipt "green card". The Default Order and Shutdown Order was remanded from the June 27, 2007 Agenda. The Respondent appeared at the Agenda through his attorney and requested that the matter be remanded to pursue an Agreed Order. Respondent was offered an Agreed Order with a payment plan. The Respondent has not entered into an Agreed Order, filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST-E:</p> <p>1. Failed to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2. Failed to conduct inventory control and reconciliation for a UST system at a retail facility [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>3. Failed to test or monitor the piping in the UST system for releases [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and (b)(2)(A)(ii), and TEX. WATER CODE § 26.3475(a)].</p>	<p>Total Assessed: \$17,000</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$17,000</p> <p>The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. The Respondent shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:</p> <p>a. Immediately:</p> <p>i. Cease dispensing fuel from the USTs;</p> <p>ii. Cease receiving deliveries of regulated substances into the USTs;</p> <p>iii. Padlock the dispensers;</p> <p>iv. Empty the USTs of all regulated substances; and</p> <p>v. Temporarily remove the UST system from service.</p> <p>b. The Respondents' UST delivery certificate is revoked immediately upon the effective date of the Order. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all of the requirements of the order.</p> <p>2. Within 10 days, submit its UST delivery certificate.</p> <p>3. Within 15 days submit to the Executive Director a detailed written report documenting the steps it has taken to comply with these Ordering Provisions 1 and 2.</p> <p>4. If the Respondent elects to permanently remove from service any UST systems at the Facility, the Respondent shall permanently remove those UST systems.</p>

		<p>5. Prior to resuming service of the USTs, the Respondent shall:</p> <ul style="list-style-type: none">a. Test or monitor the piping in the UST system;b. Install and implement a release detection method; andc. Begin conducting inventory control and reconciliation procedures. <p>6. Within 10 days of resuming service to the USTs, submit written certification notarized by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts, and or other records to demonstrate compliance with listed Ordering Provisions.</p> <p>7. The Respondents' UST systems shall remain out of service as directed by listed Ordering Provisions, until such time as the Respondent demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted.</p> <p>8. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the facility operations referenced in the Order.</p>
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Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES

PCW 11-Jan-2007

Screening 23-Sep-2003

Priority Due 22-Nov-2003

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Friend Enterprises Inc. dba Friendly Mart
 Reg. Ent. Ref. No. RN100825090
 Additional ID No(s) Petroleum Storage Tank Registration No. 007146
 Facility/Site Region 11-Austin ☒ Major/Minor Source Minor Source ☒

CASE INFORMATION

Enf./Case ID No. 9296
 Docket No. 2003-1045-PST-E
 Case Priority 2
 Media Program(s) Petroleum Storage Tank
 Multi-Media
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000
 No. of Violations 3
 Order Type 1660 without deferral
 Enf. Coordinator Merrilee Hupp
 EC's Team Enforcement Team 1

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$17,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History -10% Enhancement Subtotals 2, 3, & 7 -\$1,700

Notes

No orders or NOV's with the same or similar violations in the past 5 years.

Culpability

No ☒

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary

Ordinary

N/A

X (mark with a small x)

Notes

Compliance has not yet been achieved.

Economic Benefit

0% Enhancement

Subtotal 6

\$0

Total EB Amounts

\$3,778

*Capped at the Total EB \$ Amount

Approx. Cost of Compliance

\$2,501

SUM OF SUBTOTALS 1-7

Final Subtotal

\$15,300

OTHER FACTORS AS JUSTICE MAY REQUIRE

11% Enhancement

Adjustment

\$1,700

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Because this is a Default Order, the Executive Director recommends an upward adjustment to offset the reduction for compliance history.

Final Penalty Amount

\$17,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$17,000

DEFERRAL

0% Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferrals are not recommended for nonexpedited orders.

PAYABLE PENALTY

\$17,000

Screening Date	23-Sep-2003	Docket No.	2003-1045-PST-E	PCW
Respondent	Friend Enterprises Inc. dba Friendly Mart			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	9296			<i>PCW Revision May 17, 2004</i>
Reg. Ent. Reference No.	RN100825090			
Additional ID No(s)	Petroleum Storage Tank Registration No. 007146			
Media [Statute]	Petroleum Storage Tank			
Ent. Coordinator	Merrilee Hupp			
Site Address	7200 Manchaca Road, Austin, Travis County			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an Intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No ☐

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer ☐

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

No orders or NOVs with the same or similar violations in the past 5 years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date	23-Sep-2003	Docket No.	2003-1045-PST-E	PCW
Respondent	Friend Enterprises Inc. dba Friendly Mart	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	9296	<i>PCW Revision May 17, 2004</i>		
Reg. Ent. Reference No.	RN100825090			
Additional ID No(s)	Petroleum Storage Tank Registration No. 007146			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Merrilee Hupp			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.50(b)(1)(A)			
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(c)(1)			
Violation Description	Failure to monitor the underground storage tanks (USTs) for release at a frequency of at least once per month, not to exceed 35 days between each monitoring, as documented during an investigation conducted on June 17, 2002			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent 25%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Percent
Matrix Notes	Failure to monitor the USTs for release at a frequency of at least once per month can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.			
Adjustment				-\$7,500
Base Penalty Subtotal				\$2,500

Violation Events				
Number of Violation Events 3				
mark only one use a small x	daily	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input checked="" type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
Violation Base Penalty \$7,500				
Three semiannual events are recommended from the investigation date of June 17, 2002 to the settlement deadline date of December 14, 2003 to make the penalty commensurate with the situation.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$1,380	Violation Final Penalty Total \$7,500
This violation Final Assessed Penalty (adjusted for limits) \$7,500	

Economic Benefit Worksheet

Respondent: Friend Enterprises Inc. dba Friendly Mart

Case ID No: 9296

Reg. Ent. Reference No: RN100825090

Additional ID No(s): Petroleum Storage Tank Registration No. 007146

Media/Statute: Petroleum Storage Tank

Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE (1) avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,200	17-Jun-2002	30-Mar-2005	3.0	\$180	\$1,200	\$1,380

Notes for AVOIDED costs

Estimated annualized cost to perform statistical inventory reconciliation (SIR). Date required is based on the investigation date. Final date is based on the projected compliance date.

Approx. Cost of Compliance **\$1,200****TOTAL** **\$1,380**

Screening Date 23-Sep-2003	Docket No. 2003-1045-PST-E	PCW
Respondent Friend Enterprises Inc. dba Friendly Mart		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 9296		<i>PCW Revision May 17, 2004</i>
Reg. Ent. Reference No. RN100825090		
Additional ID No(s) Petroleum Storage Tank Registration No. 007146		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Merrilee Hupp		
Violation Number	<div style="border: 1px solid black; padding: 2px;">2</div>	
Primary Rule Cite(s)	<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.48(c)</div>	
Secondary Rule Cite(s)	<div style="border: 1px solid black; padding: 2px;"></div>	
Violation Description	<div style="border: 1px solid black; padding: 2px;">Failure to conduct inventory control and reconciliation for a UST system at a retail facility, as documented during investigations conducted on June 17, 2002 and September 11, 2003.</div>	
Base Penalty		<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

>> Environmental, Property and Human Health Matrix

	Harm			
Release	Major	Moderate	Minor	
Actual	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	Percent <div style="border: 1px solid black; padding: 2px;">25%</div>
Potential	<div style="border: 1px solid black; padding: 2px;">X</div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	<div style="border: 1px solid black; padding: 2px;"></div>	Percent <div style="border: 1px solid black; padding: 2px;"></div>

Matrix Notes

Failure to conduct inventory control and reconciliation for a UST system can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment

-\$7,500

Base Penalty Subtotal	<div style="border: 1px solid black; padding: 2px;">\$2,500</div>
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Violation Events

Number of Violation Events

3

mark only one use a small x	daily	<div style="border: 1px solid black; padding: 2px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px;">\$7,500</div>
	monthly	<div style="border: 1px solid black; padding: 2px;"></div>	
	quarterly	<div style="border: 1px solid black; padding: 2px;"></div>	
	semiannual	<div style="border: 1px solid black; padding: 2px;">X</div>	
	annual	<div style="border: 1px solid black; padding: 2px;"></div>	
	single event	<div style="border: 1px solid black; padding: 2px;"></div>	

Three semiannual events are recommended from the investigation date of June 17, 2002 to the settlement deadline date of December 14, 2003 to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <div style="border: 1px solid black; padding: 2px;">\$2,343</div>	Violation Final Penalty Total <div style="border: 1px solid black; padding: 2px;">\$7,500</div>
This violation Final Assessed Penalty (adjusted for limits) <div style="border: 1px solid black; padding: 2px;">\$7,500</div>	

Economic Benefit Worksheet

Respondent: Friend Enterprises Inc. dba Friendly Mart
 Case ID No: 9296
 Reg. Ent. Reference No: RN100825090
 Additional ID No(s): Petroleum Storage Tank Registration No. 007146
 Media/Statute: Petroleum Storage Tank
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel	\$801	17-Jun-2002	30-Mar-2005	2.8	\$112	\$2,232	\$2,343
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated expense for inventory control: (\$6.00/hour x 0.25 hours/day x 365 days/year x 1.5 years). Date required is the investigation date and the final date is the projected compliance date.

Approx. Cost of Compliance **\$801****TOTAL** **\$2,343**

Screening Date 23-Sep-2003	Docket No. 2003-1045-PST-E	PCW
Respondent Friend Enterprises Inc. dba Friendly Mart	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 9296	<i>PCW Revision May 17, 2004</i>	
Reg. Ent. Reference No. RN100825090		
Additional ID No(s) Petroleum Storage Tank Registration No. 007146		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Merrilee Hupp		
Violation Number 3		
Primary Rule Cite(s) 30 Tex. Admin. Code §§ 334.50(b)(2)(A)(i)(II) and 334.50(b)(2)(A)(ii)		
Secondary Rule Cite(s) Tex. Water Code § 26.3475(a)		
Violation Description	Failure to test or monitor the piping in the UST system for releases. Specifically, the Respondent failed to test the pressurized lines for releases and failed to conduct a performance test of the line leak detectors, as documented during an investigation conducted on September 11, 2003.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential		X	
				Percent 10%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
Matrix Notes	Failure to test the piping for leaks could allow a release of significant proportions to remain undetected for a period of time but the release would not exceed levels that are protective of human health or the environment.			
Adjustment				-\$9,000
Base Penalty Subtotal				\$1,000

Violation Events													
Number of Violation Events	2												
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">mark only one use a small x</div> <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td></td></tr> <tr><td style="padding: 2px;">monthly</td><td></td></tr> <tr><td style="padding: 2px;">quarterly</td><td></td></tr> <tr><td style="padding: 2px;">semiannual</td><td style="text-align: center;">X</td></tr> <tr><td style="padding: 2px;">annual</td><td></td></tr> <tr><td style="padding: 2px;">single event</td><td></td></tr> </table> </div>	daily		monthly		quarterly		semiannual	X	annual		single event		Violation Base Penalty \$2,000
daily													
monthly													
quarterly													
semiannual	X												
annual													
single event													
Two semiannual events are recommended for the period from September 11, 2003, when the investigation was conducted until April 16, 2004, when the case was screened, to make the penalty commensurate with the situation.													

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$54	Violation Final Penalty Total \$2,000
This violation Final Assessed Penalty (adjusted for limits) \$2,000	

Economic Benefit Worksheet

Respondent: Friend Enterprises Inc. dba Friendly Mart

Case ID No: 9296

Reg. Ent. Reference No: RN100825090

Additional ID No(s): Petroleum Storage Tank Registration No. 007146

Media [Statute]: Petroleum Storage Tank

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$500	11-Sep-2003	30-Mar-2005	1.6	\$3	\$52	\$54
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The amount listed above is an estimate of the annual cost of conducting the tests. Date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$54

Compliance History

Customer/Respondent/Owner-Operator:	CN601370315	FRIEND ENTERPRISES INC	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN100825090	FRIENDLY MART	Classification: HIGH	Site Rating: 0.00
ID Number(s):	EDWARDS AQUIFER	REGISTRATION	11-94101701	
	PETROLEUM STORAGE TANK	REGISTRATION	7146	
	REGISTRATION			
Location:	7200 MANCHACA RD, AUSTIN, TX, 78745		Rating Date: 9/1/03 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	October 09, 2003			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 24, 1998 to September 24, 2003			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Jecha Phone: 512-239-2576

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The dates of investigations.

N/A

2 05/13/1999

3 08/27/2002

- E. Written notices of violations (NOV).

N/A

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST FRIEND ENTERPRISES
INC. DBA FRIENDLY MART;
RN100825090**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2003-1045-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the revocation of the respondent's underground storage tank ("UST") delivery certificate, the imposition of an administrative penalty and corrective action of the respondent. The TCEQ also considered the Motion of the Executive Director requesting entry of an order requiring the respondent, Friend Enterprises Inc. dba Friendly Mart ("Friend Enterprises" or "Respondent"), to shutdown or remove from service the USTs at the Friendly Mart station, located at 7200 Manchaca, Austin, Travis County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Friend Enterprises owns and operates a convenience store with retail sales of gasoline located at 7200 Manchaca, Austin, Travis County, Texas (the "Facility").
2. Friend Enterprises' USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Friend Enterprises' USTs contain a regulated petroleum substance as defined in the rules of the Commission.
3. During an inspection conducted on June 17, 2002, a TCEQ Austin Regional Office investigator documented that Friend Enterprises:
 - a. failed to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring; and
 - b. failed to conduct inventory control and reconciliation for a UST system at a retail facility.

4. During an inspection conducted on September 11, 2003, a TCEQ Austin Regional Office investigator documented that Friend Enterprises failed to test or monitor the piping in the UST system for releases. Specifically, Friend Enterprises failed to test the pressurized lines for releases and failed to conduct a performance test of the line leak detectors.
5. By letters dated October 14, 2003 and November 13, 2003 the TCEQ Austin Regional Office provided Friend Enterprises with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection, spill and overfill prevention and/or corrosion protection requirements if the violations were not corrected.
6. Friend Enterprises received notice of the violations on or about October 19, 2003 and November 18, 2003.
7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Friend Enterprises, Inc. dba Friendly Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on January 18, 2005.
8. By letter dated January 18, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Friend Enterprises with notice of the EDPRP. According to the return receipt "green card", Friend Enterprises received notice of the EDPRP on January 20, 2005, as evidenced by the signature on the card.
9. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of "Friend Enterprises, Inc. dba Friendly Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on October 11, 2006.
10. By letter dated October 11, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Friend Enterprises with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Friend Enterprises received notice of the EDPRP.
11. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of "Friend Enterprises, Inc. dba Friendly Mart" (the "EDSARP") in the TCEQ Chief Clerk's office on January 19, 2007.

12. By letter dated January 19, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Friend Enterprises with notice of the EDSARP. According to the return receipt "green card", Friend Enterprises received notice of the EDSARP on January 20, 2007, as evidenced by the signature on the card.
13. More than 20 days have elapsed since Friend Enterprises received notice of the EDPRP, EDFARP, and EDSARP provided by the Executive Director. Friend Enterprises failed to file an answer to either the EDPRP, the EDFARP, or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.
14. By letter dated February 15, 2007, the TCEQ provided Friend Enterprises with notice of the TCEQ's intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Friend Enterprises' receipt of the letter.
15. As of the date of entry of this Order, Friend Enterprises has not corrected the release detection violations noted during the June 17, 2002 and September 11, 2003 investigations.
16. The UST systems at the Facility do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50 and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Friend Enterprises is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Friend Enterprises failed to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
3. As evidenced by Finding of Fact No. 3.b., Friend Enterprises failed to conduct inventory control and reconciliation for a UST system at a retail facility, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
4. As evidenced by Finding of Fact No. 4, Friend Enterprises failed to test or monitor the piping in the UST system for releases, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and (b)(2)(A)(ii), and TEX. WATER CODE § 26.3475(a).

5. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director has timely served Friend Enterprises with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact Nos. 9 and 10, the Executive Director has timely served Friend Enterprises with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact Nos. 11 and 12, the Executive Director has timely served Friend Enterprises with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 13, Friend Enterprises has failed to file a timely answer to either the EDPRP, the EDFARP, or the EDSARP as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Friend Enterprises and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Friend Enterprises for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of seventeen thousand dollars (\$17,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. As evidenced by Finding of Fact Nos. 3, 4, 5, 6, 14, and 15 Friend Enterprises failed to correct documented violations of Commission requirements within 30 days after Friend Enterprises received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
12. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overflow protection for tanks, and/or corrosion protection for tanks and piping.
13. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Friend Enterprises' UST delivery certificate if the Commission finds good cause exists.

15. Good cause for revocation of Friend Enterprises' delivery certificate exists as justified by Findings of Fact Nos. 3 through 16 and Conclusions of Law Nos. 2, 3, 4, 5, 6, 7, 8, and 11.
16. As evidenced by Finding of Fact No. 16, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to Tex. Gov't Code § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Immediately upon the effective date of this Order:
 - a. Friend Enterprises shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
 - i. Cease dispensing fuel from the USTs;
 - ii. Cease receiving deliveries of regulated substances into the USTs;
 - iii. Padlock the dispensers;
 - iv. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - v. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
 - b. Friend Enterprises' UST delivery certificate is revoked immediately upon the effective date of this Order. Friend Enterprises may submit an application for a new delivery certificate only after Friend Enterprises has complied with all of the requirements of this order.
2. Within 10 days after the effective date of this Order, Friend Enterprises shall send its UST delivery certificate to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. Within 15 days after the effective date of this Order, Friend Enterprises shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provisions Nos. 1.a.i. through 1.a.v. Friend Enterprises shall submit the report to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Barry Kalda, Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
1921 Cedar Bend Drive, Suite A150
Austin, Texas 78758

4. If Friend Enterprises elects to permanently remove from service any UST systems at the Facility, Friend Enterprises shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall, within 15 days after the effective date of this Order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Friend Enterprises shall submit the report to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Friend Enterprises is assessed an administrative penalty in the amount of seventeen thousand dollars (\$17,000.00) for violations of TEX. WATER CODE chs. 7 and 26 and rules of the TCEQ. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Friend Enterprises, Inc. dba Friendly Mart; Docket No. 2003-1045-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

6. Prior to resuming service of the USTs, Friend Enterprises shall:
 - a. Test or monitor the piping in the UST system;
 - b. Install and implement a release detection method in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - c. Immediately upon the effective date of the Commission Order, Friend Enterprises shall begin conducting inventory control and reconciliation procedures, in accordance with 30 TEX. ADMIN. CODE § 334.48(c);
7. Within 10 days of resuming service to the USTs, Friend Enterprises shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision numbers 6.a. and 6.c.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

With a copy to:

Mr. Barry Kalda, Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
1921 Cedar Bend Drive, Suite A150
Austin, Texas 78758

8. Friend Enterprises' UST systems shall remain out of service as directed by Ordering Provision No. 1.a. until such time as Friend Enterprises demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Findings of Fact Nos. 3.a. and 4 and Conclusions of Law Nos. 2 and 4 herein. The payment of the administrative penalty and Friend Enterprises' compliance with all of the terms and conditions set forth in this order completely resolve the matters set forth by this order in this action.
9. All relief not expressly granted in this Order is denied.
10. The provisions of this Order shall apply to and be binding upon Friend Enterprises. Friend Enterprises is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
11. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Friend Enterprises if the Executive Director determines that Friend Enterprises has not complied with one or more of the terms or conditions in this Order.
12. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
13. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF ROBERT R. MOSLEY

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Robert R. Mosley. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Friend Enterprises, Inc. dba Friendly Mart” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 18, 2005.

The EDPRP was sent to Friend Enterprises at its last known address on January 18, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Friend Enterprises received notice of the EDPRP on January 20, 2005, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Friend Enterprises, Inc. dba Friendly Mart” (the “EDFARP”) with the Office of the Chief Clerk on October 11, 2006.

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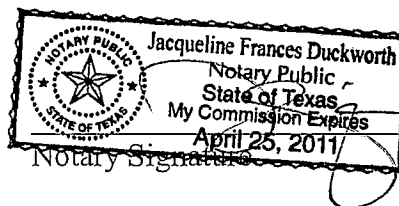
By letter dated February 15, 2007 via first class mail and certified mail, return receipt requested (Article No. 7004 1350 0002 7566 1696), I provided Friend Enterprises with notice of the TCEQ's intent to order the UST systems at the Facility shutdown and removed from service if the violations pertaining to release detection, spill and overfill prevention equipment, and/or corrosion protection were not corrected within 30 days of Friend Enterprises' receipt of the letter. As of the date of this affidavit, Friend Enterprises has not corrected the violations noted during the June 17, 2002 and September 11, 2003 investigations."



Robert R. Mosley
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Robert R. Mosley, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 3rd day of March, A.D., 2008.



Notary Stamp